Index

Abortion,
United States, 480–488
Abuse of process, 180, 415
Accountability,
health care, 115–133
Administration of justice,
Bail, Judicial Appointments etc. (Scotland) Act 2000, 168
citation of authorities, 600
contempt of court restraining publication, 599
Crown Prosecution Service Inspectorate Act 2000, 168
fairness of trial, 599
judicial appointments,
annual report on, 394
Commissioners, 600
justices' clerks, 169
leave to appeal, 168–169
Magistrates' Courts annual report, 394
Administrative law,
Council on Tribunals, 394
Affray, 629–630
After-care services, 173–174
Age discrimination, 604
Alcohol level, assumption as to, 407
Appeal,
immigration, 178
leave, 168–169
Appointments,
judicial, 600
Arrest,
assault with intention of resisting, 185
freedom of person and property, 607–608
Artificial insemination,
prisoners, 628
Assault,
resisting arrest, intention of, 185
Asylum seekers,
national assistance, availability of, 410
persecution,
non-government agents, by, 410
reasons for, 409
safe country of origin, 619
safe third country, 410–411
stateless persons, 178
Barristers,
fairness of trial due to incompetence, 599
incompetence, 599
Queen's Counsel, 439–441
Bias,
professional judge, 624
test, 182, 624–625
Book reviews,
An Introduction to Human Rights and the Common Law, English, Rosalind and Havers, Q.C., Philip (Eds), 434–435
Business and the Human Rights Act 1998, Smyth, Michael, 786–787
Civilian Oversight of Policing: Governance, Democracy and Human Rights, Goldsmith, Andrew J. and Lewis, Colleen (Eds.), 790–792
Constitutional Change in the E.U. From Uniformity to Flexibility? de Búrca, G. and Scott, J. (Eds.), 197–198
Freedom of Expression and Freedom of Information—Essays in Honour of Sir David Williams, Beatson Q.C., Jack and Cripps, Yvonne (Eds.), 787–788
Human Rights: The 1998 Act and the European Convention, Grosz, Stephen, Beatson Q.C., Jack and Duffy Q.C., Peter, 200–201
Human Rights Law and Practice, Lester of Hern Hill Q.C., Lord and Pannick, David, 200–201
Human Rights and Legal History: Essays in Honored Brian Simpson, O'Donovan, Katherine and Rubin, Gerry R. (Eds.), 641–643
Political Libels: A Comparative Study, Loveland, Ian, 432–434
Questioning Sovereignty: Law, State and Practical Reason, MacCormick, Neil, 198–199
Regulating Pollution: A U.K. and E.C. Perspective, Hilson, C., 643–644
Regulating Public Utilities: A Constitutional Approach, Graham, Cosmo, 428–429
Regulating Social Europe: Reality and Myth of Collective Bargaining in the EC Legal Order, Faro, Antonio Lo, 429–432
Social Security Law in Context, Harris, Neville (Ed.), 201–203

[2001] P.L. WINTER © SWEET & MAXWELL AND CONTRIBUTORS

Book reviews—*cont.*
States of Emergency. The Indian Experience, Iyer, Venkat, 647–649
Sword and Scales: An Examination of the Relationship between Law and Politics, 644–647
The Constitutional Foundations of Judicial Review, Elliott, Mark, 763–780
The End of Human Rights, Dousinas, Costas, 639–641
The Judicial Role in Criminal Proceedings, Doran, Sean and Jackson, John D. (Eds.), 792–793
The State and the Nation: The First Year of Devolution in the United Kingdom, Hazell, Robert (Ed.), 788–790
Values for a Godless Age: The Story of the United Kingdom's New Bill of Rights, Klug, Francesca, 436–437
Broadcasting,
telecommunications, 394
Bullying, 420

Canadian Charter of Rights and Freedoms, 207
Census,
confidentiality, 170
Chancel repairs,
Human Rights Act 1998, 651–653
Children's hearing system,
human rights, 613–614
Citation of authorities, 600
Colonies,
contemporary government, 581–584
Crown and, 571–585
future developments, 584–585
Magna Carta, 576–581
Commercial information,
freedom of information, 256–267
Commissions of Inquiry,
legal representation, 377–393
Complaints,
health care, 115–133
Confidentiality,
census, 170
disclosure of identity, 601
disclosure of sources of information, 396
foreign intercepts, use of, 395–396
freedom of information, 259–261
Freedom of Information Act 2000, 394–395
Investigatory Powers Tribunal rules, 395
police,
exchange of information, 395
regulation of investigatory powers, 169, 601
Regulation of Investigatory Powers (Scotland) Act 2000, 395
Television Licences (Disclosure of Information) Act 2000, 169
website operators, disclosure of identity of, 601
Confiscation orders, 174–175, 406, 612–613
human rights, 406, 612–613
Conseil d'Etat, recent decisions of,
administrative decisions, legislative validation of, 633–635
Banking Commission, 192–194
extradition, 190–192, 781–783
humanitarian association visit to zones where aliens refused entry, 189–190
marry, right to, 422–424
minor, extradition of, 781–783
residence permits, 783–785
Rhine and Rhone rivers, cancellation of project connecting, 635–637
statutes, Government's obligation to implement, 424
visa, refusal of, 425–426
Constitutional law,
devolution issue,
Privy Council, role of, 170
international law, domestic effect in Commonwealth countries, 97–114
modelling the constitution,
international law, domestic effect in Commonwealth countries, 97–114
public law, principles of, 684–693
Scotland Act 1998, 397
Consultation,
freedom of information, 263–264
Contempt of court,
criminal, 609–610
human rights, 408
restraining publication, 599
Copyright,
freedom of speech, 608
Council on Tribunals, 394
Counsel,
fairness of trial due to incompetence, 599
incompetence, 599
Court Service annual report, 600
Courts martial proceedings,
human rights, 615–616
Criminal injuries compensation,
improvements to scheme, 601
reports, 601
violent crimes, 398
Crown,
banishment of Queen's subjects, 398
Custody time limits,
breach of bail conditions, 616
human rights, 612, 616

Damages,
Human Rights Act 1998, 695–715
tort, 695–715
Defamation,
financial regulator, 187–188
Parliament, 469–470

Delay,
damages for court delays, 211–219
Parole Board, by, 176
trial, 176
Detention as Her Majesty's Pleasure, 186
Disciplinary hearing, attendance at, 625
Disciplinary proceedings,
prisoners, 628
Discrimination,
See also Race discrimination; Sex discrimination
age, 604
homosexuality, 603
human rights, 457–465
illegal contract, rights under, 399
sexual orientation, 603–604
special adviser to Minister, 399
Domestic violence,
United States, 283–286

Education,
immigration and right to education, 619
Learning and Skills Act 2000, 171
procurement contracts, 171
school, liability of, 604
Standards in Scotland's Schools etc. Act 2000, 170–171
Election expenses, 556–562
Electoral Commission, 253–254, 565–568
Electoral law, 245–255
Electoral Commission, 253–254, 565–568
fraud, 605
Parliamentary Oaths Act 1866, 254–255
Political Parties, Elections and Referendums Act 2000, 249–252, 399–400
Political Parties' Panel, 253–254
prisoners' right to vote, 605
reform, 400
Registration of Political Parties Act 1998, 247–249
regulations, 605
Representation of the People Act 1968–69, 246–247
Speaker's Committee, 252–253
statutes passed, 605
Entrapment,
human rights, 177
Equality,
anti-discrimination legislation, 84–85
British law, 78
challenges for courts and lawyers, 93–96
common law, 85–87
human rights, 77–96
idea of, 80–84
non-discrimination provision of Protocol 12, 79–80
reform of law, 90–93
UK law, 77–96

European Union,
Charter of Fundamental Freedoms, 77, 527–541
Developments, White Paper on, 400
directive, construction of agreement giving effect to, 606
Factortame litigation, 606
financial management, 607
reference, requirements for, 400
Treaty of Nice, 606
Expression, freedom of,
exclusive licences, 403
exclusive photographic rights, 296–297
identity of convicted murderers, 396–397
privacy, right of, 396–397
Extradition,
Conseil d'Etat, recent decisions of, 190–192, 781–783
Divisional Court, role of, 400–401
exclusion of evidence, 400–401
extra-territorial offences, 401
review of law, 607
specification of charges, 172

Football hooliganism, 172
Fraud,
electoral law, 605
Freedom of information,
Act 2000, 256–257
commercial information, 256–257
commercial interests, 261–262
confidentiality, 259–261
consultation, 263–264
exemptions,
commercial interests, 261–262
confidentiality, 259–261
prejudice to commercial interests, 262–263
trade secrets, 262
prejudice to commercial interests, 262–263
public interest, 264–266
trade secrets, 262
Freedom of person and property,
arrest, 607–608
entry, powers of, 608
Football (Disorder) Act 2000, 172
lawful arrest, 607–608
search of premises, 173
statutory powers, 401–402
stop and search powers, 173
Freedom of speech,
copyright, 608
criminal contempt, 609–610
interlocutory injunctions, 610
press, freedom of, 402
public domain, 610
qualified privilege, 402, 608–609
ward of court, 402–403

Government,
expenditure and finance, 607
intelligence and security, 173, 611
local. *See* Local government
Ministerial Code, 610
naturalisation, application for, 610
performance of departments, 611
Security and Intelligence Service, 403
special advisers, 611
Greater London Authority,
restricted information and, 181

Habeas corpus,
immigrations, 177–178
judicial review, 415
Hansard, references to, 411–412
Health and medical treatment,
after-care services, 173–174
Care Standards Act 2000, 173
complaints and accountability, 115–133
contaminated blood, liability for, 611
human fertilisation and embryology, 404
lawfulness of operation to save Siamese twins, 403–404
mental health, 404
stopping treatment, lawfulness of, 404
Homosexuality,
discrimination, 603
House of Commons,
See also Parliament
modernisation of procedure, 418
Select Committees, 269–271
House of Lords,
standards, 626
Human fertilisation and embryology, 404
Human rights,
See also Human Rights Act 1998
alcohol level, assumption as to, 407
children's hearing system, 613–614
confiscation orders, 174–175, 406, 612–613
contempt of court, 408
courts martial proceedings, 615–616
custody time limits, 612, 616
declarations of incompatibility,
burden of proof, 618
procedure, 617
delay in trial, 176
detention after treatment, 618
discrimination, 457–465
entrapment, 177
equality, 77–96
gypsies and planning laws, 614–615
hearings within reasonable time, 408
innocence, presumption of, 174
Joint Committee, 408
judicial review, 413–414
juries, award of damages by, 616
Justices' clerks, 177
legal professional privilege, 616–617

Human rights—*cont.*
life sentences, 405–406
mis-direction, 175
New Zealand, 28–37, 586–598
Parole Board, delay by, 176
planning decisions, 175–176, 407, 614
pre-trial publicity, 405
privacy in proceedings, 615
prosecutor, appeal by, 613
reports, 619
secure unit, detention in, 408
self-incrimination, 175, 405
unsafe convictions, 406
vexatious litigants, 617–618
waiver of Convention right, 177
Human Rights Act 1998,
amendment, 612
chancel repairs, 651–653
common law and, 659–661
damages, 695–715
delays by court, damages for, 211–219
first year of, 654–665
judicial review, 661–664
Orders in Council, 21–27
overview, 654–655
political expression, freedom of, 233–244
prerogative powers, 21–27
public authority, 443–445
public employment, 442–449
statutory interpretation, 655–659
tortious liability after, 210–219, 475–479
welfare services, 210–219, 475–479

Identity parades, 419
Immigration,
appeals, 178
carrier's penalty, 620–621
controls, 621
current passport, 411
deportation, proportionality and, 411
education, right to, 619
European Convention on Human Rights and, 620
habeas corpus application, 177–178
mental health, 620
race discrimination, 227–229
Race Relations (Amendment) Act 2000, 409
rules, 178
safe third country, 410–411
statistics, 178
Independent Review Service of the Social Fund, 736–762
Information,
commercial, 256–267
freedom of. *See* Freedom of information
Inhuman and degrading treatment,
prisoners, 628
Innocence, presumption of, 174

Intelligence and security, 173, 611
Intergovernmental agreements,
  functions, 134–157
Irrationality,
  non-statutory compensation scheme, 414–415
  prejudging issue, 179

Judicial appointments,
  annual report, 394
Judicial review,
  abuse of process, 180, 415
  Administrative Court, 9
  amenability of review, 622–623
  assessment of reforms, 15–19
  Bowman Report, 11–20
  bylaw, validity of, 179
  changes, 4–10, 11–20
  choice of procedure, 179–180, 622
  constitutional analysis and principle, 763–780
  contractual power not reviewable, 414
  Convention rights, standard of review of, 413
  Coroner's inquest, 621–622
  defence pleading, 8–9
  discretion, exercise of,
    financial reasons, 414
  habeas corpus, 415
  Hansard, references to, 411–412
  human rights, 413–414
  Human Rights Act 1998, 661–664
  impact, 736–762
  incommensurable values, 717–735
  Independent Review Service of the Social Fund, 736–762
  irrationality,
    non-statutory compensation scheme, 414–415
    prejudging issue, 179
  language, changes in, 5
  lawfulness of condition, 621
  leave to appeal, 415
  legitimate expectation, 621
  local government, 717–735
  Mike Tyson case, 294–307
  new rules, 4–10, 11–20
  permission, 5–6, 7–8
  primary legislation, exercise of power to amend, 412–413
  proper and improper purposes, 411–412
  public, inquiry to be held in, 178–179
  rationale of changes, 5–7
  remedies, 9
  Scotland, 294–307
  skeleton arguments, 10
  standing, 294–307, 622
  ultra vires, 354–376
  unincorporated associations, 623
  United States, 288–291

Judiciary,
  appointments,
    annual report, 394
    Commissioners, 600
  behaviour, 600
  consultations, 70–72
  criteria for selection, 68–70
  equal opportunities, 489–504
  legitimacy, 72–75
  number of judges, 600
  qualifications, 66–68
  role in twenty-first century, 62–76
  women judges, 489–504
Juries,
  award of damages by, 616
Justices' clerks,
  human rights, 177

Legal professional privilege,
  human rights, 616–617
Legal representation,
  Commissions of Inquiry, 377–393
Legitimate expectation,
  judicial review, 621
Life sentences,
  human rights, 405–406
Local government,
  conduct of members, 623–624
  declare interest, duty to, 416
  Ethical Standards in Public Life etc. (Scotland) Act 2000, 181
  Greater London Authority, restricted information and, 181
  invalid contract of sale, 623
  judicial review, 717–735
  Local Government Act 2000, 180–181
  members,
    conduct, 623
Lottery, allocation of, 182

Magistrates' Courts,
  annual report, 394
Magna Carta,
  colonies, 576–581
Maladministration,
  Pension Ombudsman, 320–323
Medical treatment. *See* Health and medical treatment
Mental health, 404
  immigration, 620
Mike Tyson case, 294–307
Misfeasance in public office, 631

Nationality,
  Community powers, 624
  illegitimate children, registration of, 416
  naturalisation, eligibility for, 181–182

Natural justice,
bias,
professional judge, 624
test, 182, 624–625
disciplinary hearing, attendance at, 625
lottery, allocation of, 182
nature of hearing, 625
Pension Ombudsman, 323–325
prisoner's representations on recategorisation, 625
procedural fairness,
lottery, allocation of, 182
reasons,
duty to give, 183
effect of failure to give, 416
Naturalisation, eligibility for, 181–182
New Zealand,
declarations of incompatibility, 28–37
human rights, 28–37, 586–598
implied repeal, 586–598

Ombudsmen,
Health Service Commissioners (Amendment) Act 2000, 417
Pensions Ombudsman, 308–328
powers, 308–313
private sector, 310–312
public sector, 183, 308–310
reports, 417, 625
role, 308–313
Orders on Council, 21–27
Overrule,
consequences, 450–456

Parliament,
administrative systems, 469–470
buildings, 467–469
challenge for, 666–674
complaints, 626
defamation, 469–470
disqualifications, 417
English question, 268–280
finance, 465–467
future of, 473–474
Hansard, references to, 411–412
Hansard Society report, 666–667
House of Commons (Removal of Clergy Disqualification) Act 2001, 626
Leader of the House, role of, 669–670
ministerial accountability, 626
Parliament Acts, 417
parliament within a parliament, 279–280
reform, 465–474
role, 626
Select Committees in House of Commons, 269–271, 626
Speaker, election of, 183–184, 616
standards and privileges, 184, 418

Parliament—*cont.*
Standing Committee on Regional Affairs, 272–273
strengthening role, 626
territorial committees, composition rule for, 278–279
voting on English law, 273–278
Westminster Hall, 273
Westminster as proxy for English Parliament, 268–280
Parole Board,
advice of, 627–628
delay by, 176
Pension Ombudsman,
constitutionality, 313–319
courts and, 308–328
creation, 312–313
judicial reaction to, 319–328
maladministration, 320–323
natural justice, 323–325
powers, 320–322
procedures, 323–326
questions of fact and law, 325–326
Pensions,
sex discrimination, 602
Planning,
fair hearing, 407
gypsies, 614–615
human rights, 175–176, 407, 614
public inquiries, 188
validity of decision, 407–408
Plea bargaining, 186
Police,
body samples, destruction of, 184–185
complaints against, 419–420
confidentiality and exchange of information, 395
identity parades, 419
legal adviser, ban on, 627
Police (Northern Ireland) Act 2000, 418
report, 185
resisting arrest, 185
samples, unlawful retention of, 418–419
Political expression, freedom of, 233–244
Political parties,
See also Electoral law
accountability, 542–570
donations, 553–556
election expenses, 556–562
Electoral Commission, 565–568
funding, 546–549, 605
donations, 553–556
financial accountability, 549–553
name, 245–255
Political Parties, Elections and Referendums Act 2000, 249–252, 542–570
referendums, conduct of, 562–565
registration, 247–249
State, role of, 544–546
transparency, 542–570

Postal Services Commission, 187
Prerogative powers,
  Human Rights Act 1998, 21–27
  Orders on Council, 21–27
Prisoners,
  artificial insemination, 628
  child visitors, 185
  detention at Her Majesty's Pleasure, 186
  disciplinary proceedings, 628
  inhuman and degrading treatment, 628
  mandatory life sentence, 627
  Parole Board, advice of, 627–628
  performance indicators, 629
  reports, 186
  rights, 185
  vote, right to, 605
Privacy, right of,
  broadcasting, 1–3
  exclusive photographic rights, 396
  expression, freedom of, 396–397
  human rights, 1
  identify of convicted murderers, 396–397
  secret filming, 2
  Younger Committee, 1
Procedural fairness,
  lottery, allocation of, 182
Procedure,
  intervention of statutory body in proceedings, 629
  plea bargaining, 186
  sentencing, 420
Procurement contracts, 171
Prosecutor, appeal by,
  human rights, 613
Public authorities,
  Financial Services and Markets Act 2000, 187
  Postal Services Act 2000, 187
  Utilities Act 2000, 420
Public enterprises,
  regulation, 505–526
Public finance,
  examinations by C&AG, 59–60
  Government Resources and Accounts Act 2000, 172
  reform, 50–61
  resource accounting, 51–56
  Whole of Government Accounts (WGA), 56–59
Public inquiries,
  planning, 188
Public interest,
  freedom of information, 264–266
Public law, principles of, 684–693
Public order,
  affray, 629–630
  proscribed organisations, 630
  Terrorism Act, 2000,
  threatening conduct, 630

Qualified privilege,
  freedom of speech, 402, 608–609

Race discrimination,
  aid, meaning of, 602–603
  Amin, Re, 220–222
  criminal proceedings, 226–227
  extension of scope of statutory protection, 220
    public authorities, to, 222–226
  immigration, 227–229
  national origin, 602
  nationality, 227–229
  promotion of quality, positive duty to promote, 229–231
  public authorities, extension to, 222–225
    criminal proceedings, 226–227
    exceptions to application, 225–226
    immigration, 227–229
    nationality, 227–229
    promotion of quality, positive duty to promote, 229–231
  Race Relations Act 1976, need for reform of, 220–222
  Race Relations (Amendment) Act 2000, 220–232
  racial group, 602
  reform of Race Relations Act 1976, 220–222
  Stephen Lawrence inquiry, 230
Reasons,
  duty to give, 183
  effect of failure to give, 416
Registration,
  political parties, 247–249
Regulation,
  analysing regulatory space, 329–353
Remedies,
  judicial review, 9
Rights,
  Canadian Charter of Rights and Freedoms, 207
  categories, 207–209
  compromising, 208–209
  exclusory/constitutive distinction, 209
  inter-relationships, 207
  terminology, 207–209
Road traffic,
  alcohol level, assumption as to, 407

Schools,
  bullying, 420
  liability of, 604
Scotland,
  Bail, Judicial Appointments etc. (Scotland) Act 2000, 168
  Convention rights and the Scotland Act, 38–49
  devolution issues, 397

Scotland—*cont.*
Ethical Standards in Public Life etc. (Scotland) Act 2000, 181
judicial review, 294–307
Regulation of Investigatory Powers (Scotland) Act 2000, 395
Scotland Act 1998, 397
Standards in Scotland's Schools etc. Act 2000, 170–171
Search of premises, 173
Select Committees,
House of Commons, 269–271
Self-incrimination,
human rights, 175, 405
Sentencing,
Court of Appeal not bound by sentencing judge, 420
mandatory life sentence, 627
pleas, acceptance of, 420
procedure, 420
Sex discrimination,
clergy, 604
fraudulent contracts, 399
illegal contract, rights under, 399
pensions, 602
Sexual orientation,
discrimination, 603–604
Skeleton arguments,
judicial review, 10
Social Fund,
Independent Review Service, 736–762
Speaker, election of, 183–184, 626
Standing,
judicial review, 294–307, 622
Standing Committee on Regional Affairs, 272–273
Stephen Lawrence inquiry, 230
Stop and search powers, 173

Telecommunications,
broadcasting, 394
Television licences, 169
Terrorism, 187
Tort,
Community law, breaches of, 421
damages, 695–715
Tort—*cont.*
defamation, 187
duty of care,
bullying, 420
Human Rights Act 1998, liability after, 210–219, 475–479
misfeasance in public office, 631
regulatory body, liability of, 630–631
statutory functions, negligence in exercise, 630–631
welfare services, liability and, 210–219, 475–479
Town and country planning. *See* Planning
Trade secrets,
freedom of information, 262
Trial,
delay, 176
mis-direction, 175

Ultra vires,
New Zealand, 354–376
Unincorporated associations,
judicial review, 623
United States,
abortion, 480–488
City of Erie et al v. Pap's A.M., tdba "Kandyland", 158–167
commerce clause, 281–293
domestic violence, 283–286
guns in schools, 282–283
judicial review, 288–291
low-value speech and the First Amendment, 158–167
Unsafe convictions,
human rights, 406

Venice Commission, 675–683
Vexatious litigants,
human rights, 617–618

Ward of court,
freedom of speech, 402–403
Welfare services,
Human Rights Act 1998, 210–219, 475–479
tortious liability, 210–219
Women judges, 489–504